

TTAB



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

JOHNSON & JOHNSON,

Opposer and Petitioner,

v.

CONAIR CORPORATION,

Applicant and Respondent.

78/284,830
75/460,929

Opposition No. 91/164,847
Cancellation No. 92/044,429

**JOINT MOTION TO CONSOLIDATE
INTERPARTIES PROCEEDINGS**

Opposer/Petitioner, Johnson & Johnson, and Applicant/Respondent, Conair Corporation,
hereby jointly move to consolidate pending Opposition No. 91/164,847 with pending
Cancellation No. 92/044,429 for purposes of trial and pre-trial proceedings.

BRIEF IN SUPPORT OF MOTION

As support for this Joint Motion, the parties state as follows:

1. On April 1, 2005, Johnson & Johnson filed a Notice of Opposition opposing the
proposed registration of Application Serial No. 78/284,830 – PURE (Opposition No. 91/164,847)
for “hair care preparations and hair styling preparations”; filed by Applicant/Respondent, Conair
Corporation (“Conair”) on August 8, 2003.

2. In its Notice of Opposition, Johnson & Johnson alleges in the alternative that: (1)
the term “pure” is merely descriptive of the goods identified in Serial No. 78/284,830 – PURE
without proof of secondary meaning, and therefore, not registrable on the Principal Register; and



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By: Chris Cook-Tawney
On: August 10, 2005

(2) the term "pure" is generic as applied to the goods identified in Serial No. 78/284,830 – PURE and therefore, not entitled to registration.

3. On April 1, 2005, Johnson & Johnson also filed a Petition to Cancel U.S. Registration No. 2,339,177 – PURE (Cancellation No. 92/044,429) for "skin care liquids, namely, body wash and body lotion"; registered by Conair on April 4, 2004.

4. In its Petition to Cancel, Johnson & Johnson asserts claims identical to those in Opposition No. 91/164,847, namely that: (1) the term "pure" is merely descriptive of the goods identified in Serial No. 78/284,830 – PURE without proof of secondary meaning, and therefore, not registrable on the Principal Register; and (2) the term "pure" is generic as applied to the goods identified in Serial No. 78/284,830 – PURE and therefore, not entitled to registration.

5. On May 32, 2005, Conair filed Answers to Opposition No. 91/164,847 and Cancellation No. 92/044,429.

6. Both of these proceedings concern the identical mark PURE and involve identical parties. Further, the allegations asserted in the proceedings are identical.

7. 37 C.F.R. § 2.116(a) provides that procedure and practice in inter-parties trademark proceedings shall be governed by the Federal Rules of Civil Procedure wherever applicable and appropriate and except as otherwise pleaded. Fed. R. Civ. P. 42(a) provides that when actions involving a common question of law or fact are pending before a court, that court may order all the actions consolidated. Reading Fed. R. Civ. P. 42(a) in light of 37 C.F.R. § 2.116(a), a motion to consolidate the two actions is proper and should be granted.

8. Consolidation would serve the interests of judicial economy by avoiding duplication of effort and would decrease the administrative burden upon the Board in administering and

disposing of the two proceedings individually. *See* Fed. R. Civ. P. 42(a); T.B.M.P. § 511; *see also* *G-Mar Development Corp. v. Tully's Coffee Corp.*, 46 U.S.P.Q.2d 1797, 1799 (T.T.A.B. 1998).

WHEREFORE, the parties respectfully request that Opposition No. 91/164,847 and Cancellation No. 92/044,429 be consolidated for all purposes in connection with these proceedings.

Respectfully submitted,

JOHNSON & JOHNSON

By: 

Norm D. St. Landau
Christen M. English
Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005
Telephone: (202) 842-8800
Facsimile: (202) 842-8465
Attorneys for Johnson & Johnson

Respectfully Submitted

CONAIR CORPORATION

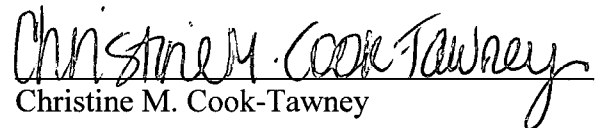
By: 

William C. Wright
Jason Drangel
Epstein Drangel Bazerman & James LLP
60 East 42nd St., Suite 820
New York, New York 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Conair Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached JOINT MOTION TO CONSOLIDATE INTER PARTIES PROCEEDINGS AND RESET DISCOVERY AND TESTIMONY PERIODS was served on counsel for Applicant/Respondent via First Class mail this 10th day of August, 2005.

William C. Wright
Jason Drangel
Epstein Drangel Bazerman & James LLP
60 East 42nd St., Suite 820
New York, New York 10165


Christine M. Cook-Tawney